

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 596

December 7, 1995, 10:25 p.m.
Page S-18228 Temp. Record

PARTIAL-BIRTH ABORTIONS/Final Passage

SUBJECT: Partial-Birth Abortion Ban Act of 1995 . . . H.R. 1833. Final passage, as amended.

ACTION: BILL PASSED, 54-44

SYNOPSIS: As passed, H.R. 1833, the Partial-Birth Abortion Ban Act of 1995, will enact criminal and civil penalties for knowingly performing a partial-birth abortion, unless such an abortion "is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose" (see vote No. 592). The term "partial-birth abortion" will be defined as an abortion "in which the person performing the abortion partially vaginally delivers the living fetus before killing the fetus and completing the delivery." A person who performs such an abortion may be fined and/or imprisoned for up to 2 years. The father, if married to the mother when she has a partial-birth abortion, and the maternal grandparents, if the mother is less than 18 years of age, will be permitted to seek civil relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. Such relief will include money damages for all injuries, psychological and physical, and statutory damages equal to three times the cost of the partial-birth abortion. Only the person who performs the partial-birth abortion will be legally liable--a woman upon whom a partial-birth abortion is performed will not be subject to criminal or civil prosecution. Medical personnel who assist a person in the performance of a partial-birth abortion, and the operator of a medical facility in which such an abortion is performed, also will not be legally liable.

Those favoring final passage contended:

The Judiciary Committee's comprehensive hearing on partial-birth abortions solicited testimony from medical and legal experts on this issue, and also heard compelling testimony from three women who had difficult, life-threatening pregnancies, two of whom had abortions (though not partial-birth abortions), and one of whom carried her child to term. The testimony and other evidence presented at the hearing added to the evidence gathered at the earlier House hearing, confirming that partial-birth abortions are brutal, never necessary, and constitutionally can and should be banned. One by one, the misrepresentations of supporters of this horrific

(See other side)

YEAS (54)			NAYS (44)			NOT VOTING (1)	
Republicans (45 or 85%)		Democrats (9 or 20%)	Republicans (8 or 15%)	Democrats (36 or 80%)		Republicans (0)	Democrats (1)
Abraham	Hatfield	Biden	Campbell	Akaka	Kerrey		Moynihan ²
Ashcroft	Helms	Breaux	Chafee	Baucus	Kerry		
Bennett	Hutchison	Conrad	Cohen	Bingaman	Kohl		
Bond	Inhofe	Dorgan	Jeffords	Boxer	Lautenberg		
Brown	Kempthorne	Exon	Kassebaum	Bradley	Leahy		
Burns	Kyl	Ford	Simpson	Bryan	Levin		
Coats	Lott	Heflin	Snowe	Bumpers	Lieberman		
Cochran	Lugar	Johnston	Specter	Byrd	Mikulski		
Coverdell	Mack	Reid		Daschle	Moseley-Braun		
Craig	McCain			Dodd	Murray		
D'Amato	McConnell			Feingold	Nunn		
DeWine	Murkowski			Feinstein	Pell		
Dole	Nickles			Glenn	Pryor		
Domenici	Pressler			Graham	Robb		
Faircloth	Roth			Harkin	Rockefeller		
Frist	Santorum			Hollings	Sarbanes		
Gorton	Shelby			Inouye	Simon		
Gramm	Smith			Kennedy	Wellstone		
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

procedure were refuted in the Senate and House hearings.

In a partial-birth abortion, a woman's cervix is first dilated over 3 days in order to make the opening large enough for her to deliver the baby. The woman is given either general or local anesthetic. Local anesthetic does not reach her baby; a small amount of general anesthetic may, but not enough to deaden pain. The abortionist then turns the baby into the breech position in the womb (turning a baby in this manner poses grave dangers to a woman's health), grabs the baby's legs and pulls him or her through the birth canal. He delivers most of the baby from the mother, but stops with the head just inside her uterus. He holds the baby's head just inside the mother because if the baby's head is delivered, then that baby has full constitutional protection. In one second, if the baby's head is allowed to travel the 3 inches necessary to emerge totally from his or her mother, then the abortionist cannot legally perform the next, horrifying steps. With only the child's head still forcibly held within the mother, the abortionist takes a pair of scissors and cuts a hole in the back of its head. He then puts a catheter into the opening and suctions out the child's brains. Then, and only then, does he allow the head to emerge of this now dead baby.

But for the deliberate, forceful actions of abortionists in the final seconds of the 3-day procedure, partial-birth abortions would be a form of delivering premature babies. These abortions are performed from the 20th week of gestation right through the ninth month. With modern medicine, viability now begins at 23 weeks, and some infants have survived who have been born even earlier. The abortionist's actions at the end of the procedure prevent what the abortion industry calls the "complication" of a live birth.

We are truly saddened that we even have to debate this issue with our colleagues. Whatever one's position is on abortion, one should admit the chilling inhumanity of this procedure. If Senators were to hear that the local humane society was going to destroy 100 puppies or kittens by cutting open the back of their heads, without anesthetic, and suctioning out their brains, they would be outraged, but, because we are talking about "abortion" and human babies many Senators are in denial. They are so ideologically committed to supporting abortion that they are blind to the facts. They are not deliberately dishonest--it is just that their pro-choice fanaticism makes them believe obvious falsehoods despite overwhelming evidence to the contrary. In the House, pro-life and pro-choice Members from both parties joined together to ban this procedure, and the American Medical Association's legislative review board unanimously endorsed it. In the Senate, though, we have found little willingness from pro-choice Members to face basic facts. Instead, they have continued to make claims that are demonstrably false.

Opponents of this bill do not like the term "partial-birth abortion." They would have much preferred that we had used a euphemism. As columnist George Will points out, "Pro-abortion extremists object to that name, preferring 'intact dilation and evacuation' for the same reason that the pro-abortion movement prefers to be called pro-choice." Some Senators have pointed out that the term "partial-birth abortion" does not appear in medical journals, but neither do the euphemisms that are used by its few practitioners. The reason is that it is not an accepted, widely used procedure. That fact does not make the term inaccurate, or in any way vague, because the definition of what is meant by this term is contained in the bill, and that definition is very specific. No matter how much Senators may wish to cloud the issue, they know exactly what is meant. Some Senators have complained that we did not say in the definition that the baby must be killed by the current method of cutting open the baby's head and suctioning out his or her brains. However, we could not put that in the definition, because the abortionist could then just stab the baby in the heart or use some other method to kill the baby before completing the delivery. Throughout this debate, we have shown drawings of exactly the procedure that will be outlawed. Our colleagues have repeatedly stated that they find our showing of these drawings offensive; for our part, we find offensive that this practice is legal in America. Additionally, we remind our colleagues that these are not our drawings--they are from the American Medical Association's official newspaper, the AMA News, and they have been acknowledged by Dr. Martin Haskell (who performs partial-birth abortions) as being accurate. Similarly, Dr. Robinson, the self-described abortionist who testified on behalf of the National Abortion Federation, has said these drawings are accurate. Senators who oppose this bill may not like the honest term "partial-birth abortion," and they may not like the fact that we have described the horrific details which they would prefer to keep secret from the public, but they cannot change the basic facts that the purpose and scope of this bill are very clear and specific.

Another misrepresentation that has been widely spread by bill opponents is that the anesthesia given to the mother in a partial-birth abortion kills the baby before the abortion is even performed. Mary Campbell, the medical director of Planned Parenthood who testified at the hearing, circulated a "fact" sheet claiming that anesthesia that is used is calculated by the "mother's weight, which is 50 to 100 times the weight of the fetus . . . This induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs at the beginning of the procedure while the fetus is still in the womb." Similarly, in a June 23, 1995 submission to the House Judiciary Constitution Subcommittee, the late Dr. McMahon (the other of the two doctors who has admitted to performing partial-birth abortions) wrote that the anesthesia causes fetal demise. The Senate Judiciary Committee asked the American Society of Anesthesiologists if there was any truth to this claim. Dr. Norig Ellison, the president of the American Society of Anesthesiologists, responded that it had "absolutely no basis in scientific fact" and that he was "deeply concerned..that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary and perhaps lifesaving medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus." He further testified that regional anesthesia (used in many partial-birth abortions and most normal deliveries) has no effect on the fetus, and that general anesthesia has some minimal sedating effect, though it is doubtful that it provides any pain relief. Further, we know that after interviewing Drs. McMahon and Haskell (Dr. Haskell is the other acknowledged partial-birth abortionist) American Medical News

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reported in 1993 that both had said that the "majority of fetuses aborted this way are alive until the end of the procedure."

Another claim that we have heard made is that babies at the stage of gestation at which partial-birth abortions are performed (from the 20th week through the ninth month) do not feel pain. This claim also is totally false. Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, testified before the House hearing that "The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain." On partial-birth abortions, he further stated that "Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure." Similarly, Dr. Harlan Giles, a professor of high-risk obstetrics and perinatology who performs abortions by a variety of procedures, had the following to say of the procedure: "In my own personal opinion, particularly when there are other techniques available, that the introduction of a sharp instrument into the brain and sucking out the brain constitutes cruel and unusual fetal punishment."

Another myth that has been advanced by proponents of partial-birth abortions is that they are sometimes medically necessary to protect the health of the mothers, particularly when their babies have severe abnormalities. However, numerous doctors have testified that they are never necessary. Dr. Nancy Romer, for example, a practicing Ob-Gyn and clinical professor, stated that she has never had to resort to the procedure, nor have any of the 40 obstetricians in her department. Dr. Pamela Smith, the director of medical education in the department of obstetrics and gynecology at the Mount Sinai Medical Hospital Center in Chicago, similarly stated that a doctor would never have to resort to this procedure. For late-term abortions, there are always safer, more humane procedures.

The next claim advanced by proponents of the partial-birth abortion procedure is that if it is not necessary, at least sometimes it is the safest procedure. Again, the testimony and other evidence presented at the Judiciary Committee hearing proved advocates of this procedure wrong. Dr. Warren Hern is the author of "Abortion Practice," which is the Nation's most widely used textbook on abortion standards and procedures. In an interview in the November 20, 1995 issue of the American Medical News, Dr. Herns stated that "I would dispute any statement that this is the safest procedure to use." Turning the fetus to a breech position is "potentially dangerous" because it may cause "amniotic fluid embolism or placental abruption." He also said, "You really can't defend it." Dr. Herns opposes the passage of this bill because he feels it is an attempt to chip away at the right to have an abortion, but he admits it is not a procedure that needs to be performed for safety reasons. Dr. Pamela Smith also testified as to the significant danger for the mother of this method of abortion. She testified that "partial-birth abortion is a perversion of a well-known technique used by obstetricians to deliver breech babies when the intent is to deliver the child alive . . . this technique is rarely used in this country because of the well known associated risk of maternal hemorrhage and uterine rupture." In a letter to Senator Smith, she also said that those women who were counseled that this procedure was the safest procedure for them were not told the truth. In her words, "Women who were 'counseled' by abortionists that they were submitting themselves to a procedure that was 'safe' and that would insure their future reproductive potential were deceived and lied to. These women actually risked losing their uterus or their lives by submitting to these dangerous intrauterine extractions."

Some Senators have suggested that this bill is unconstitutional because it provides a life-of-the-mother exception, but not a health exception, and testimony was heard from constitutional experts saying that they thought this bill would be found unconstitutional if passed. Most of the experts testified that the bill was fully constitutional, though, and their arguments were more persuasive. First, the bill in no way restricts the "right" to have a third-trimester abortion. The "right" that the Supreme Court found between the lines of the Constitution was never the right to terminate a pregnancy right up until the moment of birth in the cruelest, most inhumane method imaginable. Second, it is likely that this method of "abortion" in which a child is brought four-fifths of the way out of his or her mother before he or she is killed eventually will be ruled to be infanticide, not abortion. We of course do not know what various judges may decide they think the Constitution means, but if they follow the Constitution and precedents instead of their own policy agendas, they will hold this bill to be constitutional.

The area that our colleagues have been least willing to face facts on is that most of these abortions that have been performed that have been acknowledged have been for purely "elective" reasons, meaning that both the mothers and babies have been perfectly healthy. On November 8, 1995, Dr. Haskell stated under oath in Federal District Court in Ohio that most of his partial-birth abortions: "are elective in the 20-24 week range. In my particular case, probably 20 percent are for genetic reasons and the other 80 percent are purely elective." The other acknowledged partial-birth abortionist, Dr. McMahon, told the American Medical News in 1993 and Congress in 1995 that none of the abortions he performed were elective, but that 80 percent were "therapeutic." He then submitted a self-selected sample list to Congress of 175 of the "therapeutic" reasons he had performed partial-birth abortions, right through the ninth month. That list contained 39 abortions for "maternal depression" and 9 abortions because the baby had a cleft palate. Other abortions were performed because of "agoraphobia" (the fear of going outside), high blood pressure, diabetes, and because of "pediatric indications" (meaning that the girls were under 18 years old).

To defend this horrific practice, our colleagues brought two former patients of Dr. McMahon's to testify before the Judiciary Committee. These women both had pregnancies in which they found out in the third trimester that their babies had fatal birth defects. Both these women testified that Dr. McMahon told them that the only procedure that was safe for them was to have an intact dilation and evacuation. However, these women also testified that their babies died in the womb, that their babies were not stabbed in the back of the head, that their baby's brains were not suctioned out, and that they would never have allowed that to happen. In other words, they had late-term abortions on the advice of Dr. McMahon, who said that it was impossible for them to have the live births

that they wanted, but they emphatically did not have partial-birth abortions. Their babies were not dragged alive into the birth canal and then killed, which is precisely the procedure that this bill will ban. Their testimony was heartwrenching, but it was not relevant to this debate.

We are dismayed at the lengths that pro-abortion forces are willing to go to distort this issue. To counter the testimony of Brenda Schafer, the nurse who witnessed a partial-birth abortion performed by Dr. Haskell, they have been circulating a letter that is supposedly from her supervisor at the clinic at which she saw the abortion. That letter claims that she did not participate in that procedure, that Dr. Haskell does not use ultrasound as described by Nurse Schafer, and that he does not perform partial-birth abortions past 24 weeks of pregnancy. This supposed supervisor is wrong about the use of ultrasound, because we have Dr. Haskell's own words saying that he uses it in these abortions; this supposed supervisor is wrong about Dr. Haskell not performing these abortions past 24 weeks, because he says that he does. The truth is that Nurse Schafer's description of this procedure exactly describes what Drs. McMahon and Haskell say they have done.

Brenda Pratt Shafer described the partial-birth abortion she witnessed as follows: "I am a registered nurse with 13 years of experience. But one day in September 1993 my nursing agency assigned me to work at a Dayton, Ohio, abortion clinic, and I had often expressed strong pro-choice views to my two teenage daughters. So I thought this assignment would be no problem for me. I was wrong. I stood at a doctor's side (Dr. Haskell) as he performed the partial-birth abortion procedure--and what I saw is branded forever in my mind. The mother was 6 months pregnant. The baby's heartbeat was clearly visible on the ultrasound screen. The doctor went in with forceps and grabbed the legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms--everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were claspings and unclaspings, and his feet were kicking. then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp. I never went back to that clinic. But I am still haunted by the face of that little boy--it was the most perfect, angelic face I have ever seen." We urge our colleagues, both pro-life and pro-choice, to join us in passing this bill.

Those opposing final passage contended:

Late-term abortions are physically difficult and emotionally devastating to the women involved. These abortions are of wanted babies; women do not casually carry children through most of their pregnancies and then decide to abort them for trivial reasons. They take place under the most tragic of circumstances, when something has gone wrong. The Judiciary Committee heard a lot of medical and legal testimony both for and against this bill, but the significance of that testimony paled before the testimony that was given by two women who had so-called "partial-birth" abortions. The riveting accounts of these women who courageously came to tell the nearly all-male Senate why this legislation is so misguided brought the needed human dimension to this debate. Throughout the several days of debate on this bill, we have continually shown our colleagues the faces of these two women and their families, to remind them that we are not simply talking about an abortion procedure--we are talking about real women, and real families, in desperate circumstances.

One of the women who had this procedure is Coreen Costello. She is married and the mother of two children, and is a self-described pro-life Republican. When she was 7-months pregnant with her third child, she was told that her child had a lethal neurological disorder, had been unable to move for 2 months, and was not expected to live. In her words: "I considered a Cesarean section, but experts at Cedars-Sinai Hospital were adamant that the risks to my health and possibly my life were too great. There was no reason to risk leaving my children motherless if there was no hope of saving Katherine. The doctors all agreed that our only option was the intact D&E procedure. I was devastated. The thought of an abortion sent chills down my spine. I remember patting my tummy, promising my little girl that I would never let anyone hurt or devalue her. After Dr. McMahon explained the procedure to us, I was so comforted. He and his staff understood the pain and anguish we were feeling. I realized I was in the right place. This was the safest way for me to deliver. This left open the possibility of more children, it greatly lowered the risk of my death, and most important to me, it offered a peaceful, painless passing for Katherine Grace. When I was put under anesthesia, Katherine's heart stopped. She was able to pass away peacefully inside my womb, which was the most comfortable place for her to be. Even if regular birth or a Cesarean had been medically possible, my daughter would have died an agonizing death. When I awoke a few hours later, she was brought in to us. She was beautiful. She was not missing any part of her brain. She had not been stabbed in the head with scissors. She looked peaceful. My husband and I held her tight and sobbed. We stayed with her for hours, praying and singing lullabies. Giving her back was the hardest moment of my life."

The other woman who had this procedure who testified is Vicki Wilson. She and her husband were excitedly awaiting the birth of their third child when they found out at 36 weeks of pregnancy that approximately two-thirds of their baby's brain had formed outside of her skull. They were told that there was no way her daughter would survive outside of her womb, and that having a cesarean-section would be too dangerous for Viki. In Viki's words: "The biggest question for me and my husband was not 'Is she going to die?' A higher power had already decided that for us. The question now was 'How is she going to die?' We wanted to help her leave this world as painlessly and peacefully as possible, and in a way that protected my life and health and allowed us to try again

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to have children. We agonized over these options, and kept praying for a miracle. After discussing our situation extensively, our doctors referred us to Dr. McMahon. It was during our drive to Los Angeles that we chose our daughter's name. We named her Abigail, the name my maternal grandmother had always wanted for a grandchild. We decided that if she were named Abigail, her great-grandma would be able to recognize her in heaven. My husband grilled Dr. McMahon with all the same questions that many of you probably have asked about the procedure. We would never have let anything happen to our baby that was cruel, or unnecessary; and Bill as my husband, loving me, wanted to be sure it was safe for me. Dr. McMahon and this procedure were our salvation. My daughter died with dignity inside my womb. She was not stabbed in the back of the head with scissors, no one dragged her out half alive and then killed her, we would never have allowed that to happen."

When Senators consider this bill, and weigh the medical and legal testimony, we urge them to never lose sight of the fact that if this bill were law when Dr. McMahon helped Viki Wilson and Coreen Costello, he would have faced up to 2 years in prison. In response to this riveting testimony, supporters of this bill have said that they sympathize with these women but that they did not have partial-birth abortions because their babies died in the womb. However, we heard testimony from medical experts such as Dr. Robinson who said that the definition in the bill: "would amount to a ban on a D&E procedure entirely because the law is so vague and based on erroneous assumptions, it would leave doctors wondering if they were open to prosecution or not each time they performed a late abortion. That means that by banning this technique, you would in practice ban most later abortions altogether by making them virtually unavailable. And that means that women will probably die." Using a term like "partial-birth abortion" serves the purpose of inflaming passions against this procedure, but it is a medically inaccurate term that threatens women's health.

This bill is not about just one medical procedure, as our colleagues' claim; it is about chipping away at the right to choose. This Congress, on one measure after another, has tried to restrict the constitutional right to an abortion and has often succeeded. For instance, it has voted to take that right from poor women and prisoners by denying public funding and it has taken away that right as a health care option for Federal employees.

This bill goes much further, though, in that it will restrict the right to an abortion in a manner which we believe is clearly unconstitutional. In 1976, the Supreme Court ruled in *Planned Parenthood v. Danforth* that a specific form of abortions (saline) could not be banned after the 12th week. Nineteen years later, Congress is considering a specific ban on another form of abortion. The Judiciary Committee heard conflicting testimony on the constitutionality of this bill. We agreed with the arguments that said the bill was unconstitutional, but we think the broader point is that the testimony at least demonstrated that this bill is constitutionally questionable.

Similarly, the medical testimony the Judiciary Committee heard was conflicting. Some abortion providers testified that in some cases this procedure is necessary for the life or health of the woman, and that it is also the safest procedure to be used. Other doctors sharply disputed these claims. In our opinion, this dispute is a medical dispute that doctors should resolve among themselves without congressional interference.

Overall, the Judiciary Committee hearing left us more convinced than ever that the decision to have a late-term abortion is a highly personal one that should be left to the woman, and the safest and most appropriate forms of abortion should be determined by medical professionals, not Senators. We urge Senators not to practice medicine without a license. We urge them to defeat this bill.